

**ASSEMBLY BILL**

**No. 801**

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**Introduced by Assembly Member Duvall**

February 26, 2009

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An act to amend Section 138.7 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 801, as introduced, Duvall. Workers' compensation: individual identifiable information.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law provides that a person or public or private entity who is not a party to a claim for workers' compensation benefits may not obtain individually identifiable information, as defined, that is obtained or maintained by the Division of Workers' Compensation of the Department of Industrial Relations on that claim, except as specified.

This bill would authorize the Department of Insurance to use individually identifiable information for purposes of investigating and prosecuting insurance fraud.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 138.7 of the Labor Code is amended to  
2     read:

1 138.7. (a) Except as expressly permitted in subdivision (b), a  
2 person or public or private entity not a party to a claim for workers'  
3 compensation benefits—~~may~~ *shall* not obtain individually  
4 identifiable information obtained or maintained by the division on  
5 that claim. For purposes of this section, "individually identifiable  
6 information" means any data concerning an injury or claim that is  
7 linked to a uniquely identifiable employee, employer, claims  
8 administrator, or any other person or entity.

9 (b) (1) The administrative director, or a statistical agent  
10 designated by the administrative director, may use individually  
11 identifiable information for purposes of creating and maintaining  
12 the workers' compensation information system as specified in  
13 Section 138.6.

14 (2) The State Department of Health Services may use  
15 individually identifiable information for purposes of establishing  
16 and maintaining a program on occupational health and occupational  
17 disease prevention as specified in Section 105175 of the Health  
18 and Safety Code.

19 (3) (A) Individually identifiable information may be used by  
20 the Division of Workers' Compensation, the Division of  
21 Occupational Safety and Health, and the Division of Labor  
22 Statistics and Research as necessary to carry out their duties. The  
23 administrative director shall adopt regulations governing the access  
24 to the information described in this subdivision by these divisions.  
25 Any regulations adopted pursuant to this subdivision shall set forth  
26 the specific uses for which this information may be obtained.

27 (B) Individually identifiable information maintained in the  
28 workers' compensation information system and the Division of  
29 Workers' Compensation may be used by researchers employed by  
30 or under contract to the Commission on Health and Safety and  
31 Workers' Compensation as necessary to carry out the commission's  
32 research. The administrative director shall adopt regulations  
33 governing the access to the information described in this  
34 subdivision by commission researchers. These regulations shall  
35 set forth the specific uses for which this information may be  
36 obtained and include provisions guaranteeing the confidentiality  
37 of individually identifiable information. Individually identifiable  
38 information obtained under this subdivision shall not be disclosed  
39 to commission members. No individually identifiable information  
40 obtained by researchers under contract to the commission pursuant

1 to this subparagraph may be disclosed to any other person or entity,  
2 public or private, for a use other than that research project for  
3 which the information was obtained. Within a reasonable period  
4 of time after the research for which the information was obtained  
5 has been completed, the data collected shall be modified in a  
6 manner so that the subjects cannot be identified, directly or through  
7 identifiers linked to the subjects.

8 (4) The administrative director shall adopt regulations allowing  
9 reasonable access to individually identifiable information by other  
10 persons or public or private entities for the purpose of bona fide  
11 statistical research. This research shall not divulge individually  
12 identifiable information concerning a particular employee,  
13 employer, claims administrator, or any other person or entity. The  
14 regulations adopted pursuant to this paragraph shall include  
15 provisions guaranteeing the confidentiality of individually  
16 identifiable information. Within a reasonable period of time after  
17 the research for which the information was obtained has been  
18 completed, the data collected shall be modified in a manner so that  
19 the subjects cannot be identified, directly or through identifiers  
20 linked to the subjects.

21 (5) *The Department of Insurance may use individually*  
22 *identifiable information for purposes of investigating and*  
23 *prosecuting insurance fraud.*

24 ~~(5)~~

25 (6) This section shall not operate to exempt from disclosure any  
26 information that is considered to be a public record pursuant to  
27 the California Public Records Act (Chapter 3.5 (commencing with  
28 Section 6250) of Division 7 of Title 1 of the Government Code)  
29 contained in an individual's file once an application for  
30 adjudication has been filed pursuant to Section 5501.5.

31 However, individually identifiable information shall not be  
32 provided to any person or public or private entity who is not a  
33 party to the claim unless that person identifies himself or herself  
34 or that public or private entity identifies itself and states the reason  
35 for making the request. The administrative director may require  
36 the person or public or private entity making the request to produce  
37 information to verify that the name and address of the requester  
38 is valid and correct. If the purpose of the request is related to  
39 preemployment screening, the administrative director shall notify  
40 the person about whom the information is requested that the

1 information was provided and shall include the following in  
2 12-point type:

3 “IT MAY BE A VIOLATION OF FEDERAL AND STATE  
4 LAW TO DISCRIMINATE AGAINST A JOB APPLICANT  
5 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR  
6 WORKERS’ COMPENSATION BENEFITS.”

7 Any residence address is confidential and shall not be disclosed  
8 to any person or public or private entity except to a party to the  
9 claim, a law enforcement agency, an office of a district attorney,  
10 any person for a journalistic purpose, or other governmental  
11 agency.

12 Nothing in this paragraph shall be construed to prohibit the use  
13 of individually identifiable information for purposes of identifying  
14 bona fide lien claimants.

15 (c) Except as provided in subdivision (b), individually  
16 identifiable information obtained by the division is privileged and  
17 is not subject to subpoena in a civil proceeding unless, after  
18 reasonable notice to the division and a hearing, a court determines  
19 that the public interest and the intent of this section will not be  
20 jeopardized by disclosure of the information. This section shall  
21 not operate to restrict access to information by any law enforcement  
22 agency or district attorney’s office or to limit admissibility of that  
23 information in a criminal proceeding.

24 (d) It shall be unlawful for any person who has received  
25 individually identifiable information from the division pursuant  
26 to this section to provide that information to any person who is  
27 not entitled to it under this section.